



MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Michael J. O'Brien, Presiding Judge
Nadine Robinson, Court Manager

RE: 15th Annual Report from Tigard Municipal Court

DATE: February 18, 2014

We appreciate the opportunity to meet with Council and the City Manager for our 15th annual review of Tigard Municipal Court (TMC) operations and policies. In addition to information about last year's caseload and court activities, this year's report will address current policies on traffic diversion programs and possible alternatives for expanding diversion options to accommodate the Distracted Driving Program proposed by the Tigard Police Department (TPD). The information on the court's caseload is based on data from calendar year (CY) 2013 and previous calendar years. As always, we welcome your questions and comments.

1. Court goals and judicial philosophy: When complaints are filed with the court by TPD or Code Enforcement officers, the court's first objective is to provide an impartial forum for adjudication in a fair, professional and efficient manner, consistently applying relevant statutes and ordinances. Where an offense has been committed, the court strives to: 1) Enter appropriate sanctions in order to deter subsequent offenses, taking into account individual circumstances to the extent allowed by law and workload constraints; and, 2) Provide education about public safety, relevant statutes and the legal process. As discussed in detail below, TMC and many other Oregon courts have traditionally maintained diversion programs to educate defendants convicted of specified traffic violations. These programs generally allow citations to be dismissed upon completion of all requirements, with no record of a conviction transmitted to DMV.

2. Overview of court operations: The court's caseload continues to focus heavily on traffic violations, primarily "moving" violations, license and insurance offenses and a variety of equipment violations arising under the Oregon Revised Statutes. The court also adjudicates a relatively small number of civil infractions cited under the Tigard Municipal Code, some adult misdemeanors and a limited number of juvenile misdemeanors and status offenses referred by the Tigard Peer Court. In 2013, 7% of all defendants in traffic cases were given the opportunity to participate in diversion programs.

3. Diversion policies: Oregon law confers broad authority on judges to resolve cases, including specific statutory authority under ORS 135.755 to dismiss a case "in furtherance of justice." The court's policy towards diversions is one component of the city's interactions with citizens, and the court is therefore seeking the assistance of Council in evaluating its programs and their contribution to enhancing public safety in Tigard. Depending on the city's broad goals, diversion programs can be expanded or left in their present limited form. If the Council would like to pursue expansion, as outlined below, the court can return with a more detailed review of the available options.

Many defendants, aware of programs in other states or other Oregon courts, request “traffic school” or “diversion” at arraignment in order to prevent a conviction from appearing on their driving records. Under current criteria (described below), however, the request is usually denied and the vast majority of TMC convictions are forwarded to DMV. A court offer of diversion is rarely declined by a defendant.

The principal policy grounds for limiting diversions are:

- Complete driving histories are useful to courts in determining future sanctions and, potentially, to auto insurance companies in setting rates.
- Diversions “mask” convictions so they become, in effect, invisible to DMV’s Driver Improvement Program (DIP) and to judges in other courts. The DIP program restricts or suspends the driving privileges of those who receive multiple violations over an 18- to 24-month period. “Masking” convictions through multiple diversions could undermine the DIP’s impact and prevent other courts from having access to a defendant’s full driving history.
- By statute, participation in traffic diversion programs is not noted on DMV driving records, unlike diversions for Driving Under the Influence of Intoxicants. Defendants, in the worst case, could have multiple “invisible” convictions that do not appear on the DMV record after participation in one or more diversion programs in various courts. This risk could be mitigated by requiring defendants to sign declarations that they have not participated in other diversion programs during the applicable eligibility period.

The primary advantages of expanding diversion programs may be summarized as follows:

- Traffic schools like Legacy’s Trauma Nurses Talk Tough are designed to educate drivers about safe driving and relevant laws that highway users are expected to obey, enhancing public safety and reducing recidivism. TPD’s proposed Distracted Driver program is intended to educate drivers who may be unaware of the effects of cellphone use and texting on their ability to concentrate on driving.
- The court’s existing diversion programs are designed to be revenue-neutral. Eligible defendants pay a fee to the court equal to the fine they would otherwise pay, along with a fee for the class they will attend. If a defendant fails to successfully complete the class, the fee will be converted into a fine and conviction is forwarded to DMV.
- Diversion fees could be restructured by resolution to enhance general-fund revenues.
- Some drivers who might otherwise plead “not guilty” may choose diversion instead, relieving pressure on the court’s trial dockets.

4. Existing diversion programs in the TMC: As noted in previous annual reports, current programs are designed for three groups of offenders: teenage drivers (18 and under), seniors over 59 and drivers cited for seatbelt violations. Classes specifically designed for teens may offset some of the effects of inexperience, while classes for seniors can increase awareness of the effects of aging. To be eligible, defendants must appear personally in court and have clear records for the last five years. The program requirements include payment of a fee equal to the minimum fine and attendance at a traffic school assigned by the court within 90 days. Once all requirements are fulfilled, the citation will be dismissed and a conviction will not appear on the DMV driving record.

When implemented, TPD's Distracted Driver program would expand the court's diversion options to include violations involving Mobile Communications Devices (MCD's) and other cases in which driver distraction was a component. As proposed by TPD, eligibility standards would be relaxed to allow enrollment by drivers with a clear driving record for the previous two years.

Some neighboring jurisdictions, following criteria similar to the California courts, have adopted much more expansive diversion programs than the TMC's. The Beaverton Municipal Court, for example, offers diversion for most minor traffic violations, with a two-year eligibility period for all adults and teens. Its new Distracted Driver program has even fewer restrictions on eligibility: defendants pay a fee equal to their fine and must complete a class within 60 days. The Sherwood and Tualatin municipal courts have a similar program, with a five-year "lookback" for a clear driving record. High percentages of eligible defendants elect to take part in these programs.

5. Fiscal considerations in diversions: Oregon courts are required by statute to pay an assessment or "replacement fine" of \$61 from all fines collected for each traffic violation. That sum apparently represents the state's estimate of the cost of services provided to cities by state and local agencies such as DMV and the Department of Public Safety Standards and Training. Currently, the TMC remits the assessment even when defendants are referred to, and successfully complete, diversion.

Many city councils have directed, by resolution, that the \$61 assessment be retained in their general funds as a diversion fee since state and local agencies do not provide any direct services in such cases. If Council is interested in exploring this possibility, we can do additional research and provide further details upon request.

6. TMC caseload during CY 2013: After the second-busiest year in the court's history, last year's caseload declined by 21.1% (Table 1). The total number of filings was 8.4% below the six-year average for the 2008-13 period. Despite this reduction, TMC remains among the most active of approximately 150 municipal courts in Oregon.

Table 1 - Annual Court Caseloads CY 2008-13	
2013	7,180
2012	9,105
2011	8,349
2010	7,028
2009	9,165
2008	6,229

Table 1 reflects all traffic, parking, civil infraction and misdemeanor cases filed with the court during each year. As in the recent past, our 7,135 traffic and parking violations accounted for nearly the entire 2013 caseload. Trials were scheduled in 9% of these cases. Quarterly fluctuations during the year ranged from a

high of 2,070 in the 2nd Quarter to 1,568 in the 3rd. Our monthly total for June 2013 (867 violations) was the third highest in recent years.

7. Disposition of cases: While our caseload averages about 600 per month, 97% of all filings are disposed of by judgments, acquittals or dismissals within 90 days. The cases were resolved as follows:

Guilty by judge:	2,785
Guilty by clerk:	2,354
Guilty by default:	841
Deferred/diversion:	532
Acquitted or dismissed:	482
Pending:	143
Other:	43

8. Categories of cases (Table 2): As in past years, the most common categories of traffic violations filed during 2013 were Speeding (43%) and Failure to Obey traffic control devices (12%). The court also received high numbers of citations for Mobile Communications Devices (8% of traffic caseload) and Following Too Closely (4%).

Table 2

<i>Violation types</i>	<i>2013</i>
Speeding	3,048
Traffic control	860
Cellphones	545
Following viol	307
<i>Total traffic</i>	<i>7,135</i>

In addition, 345 insurance-related citations were filed, along with 448 citations for license-related violations. Defendants who show proof of insurance prior to or at arraignment may be eligible for dismissal by the judge or the TMC Violations Bureau under state statute. Defendants who show proof of compliance with insurance or licensing requirements can benefit from substantial reductions in fines.

9. Public Information: The court continues to give very high priority to providing information in person, in print and online about Oregon law, court operations and public safety. Approximately 80 of the judge's monthly "Rules of the Road" columns have appeared in Cityscape since 2007.

10. Budget highlights: The court imposed \$1,117,181 in fines and fees during 2013, compared to \$1,467,304 the previous year, a 23.9% decrease. The court remitted \$358,205 in statutory assessments to state and local agencies during 2013.

11. Technology enhancements: The court received 1,866 online payments last year, generating revenues of \$164,703. The number of electronic citations (5,488 in 2013) filed with the court continues to increase, facilitating data transfers and court processing. With all motorcycle officers and police vehicles now equipped with video cameras, video evidence is commonly offered during trials.

9. Other activities in 2013: The court has hired a clerk to fill a vacant position. The judge and court manager attended ODOT's annual Judicial Education Conference in March.

In closing, we wish to again express our deep appreciation of our court staff for their dedication, hard work and professionalism: Chris Snodgrass, Brenda Annis and Morgan McFadden.

Please let us know if you would like any additional information. Thank you again for your time and interest.